

SUBDIVISIONS

When land is subdivided, that division of land is subject to the requirements of both chapter 3 and chapter 4 of Title 76, Montana Code Annotated. An explanation of each chapter follows.

SANITATION IN SUBDIVISIONS (Title 76, chapter 4)

The Montana Department of Environmental Quality (DEQ) sets standards for the review and approval of water systems for subdivisions to protect the quality and potability of water for public uses. These standards apply to public and private water supplies (including individual wells), sewage disposal facilities, storm water drainage ways and solid waste disposal. Review of certain subdivisions and enforcement of these requirements may be delegated to a local department or board of health.

1. Types of Activities Regulated

Condominiums, mobile home parks, recreational vehicle parks and divisions of land that create a parcel of less than 20 acres are subject to sanitary review. A person may not dispose of any lot within a subdivision, erect any facility for the supply of water or disposal of sewage or solid waste, erect any building or shelter in a subdivision that requires facilities for the supply of water or disposal of sewage or solid waste, or occupy any permanent buildings in a subdivision until the subdivision has been reviewed and approved by the Montana Department of Environmental Quality (DEQ) or by the local reviewing authority if the DEQ has certified a local department or board of health. Subdivisions within the jurisdictional areas that have growth policies that meet the requirements described in statute (76-1-601, MCA), or within a first-class or second-class municipality, and for which municipal water, sewage disposal, solid waste and storm drainage will be provided are not subject to review, but will be required to provide a notice of certification of adequate municipal facilities (municipal facilities checklist).

Statute: 76-4-101, *et seq.*, MCA (Sanitation in Subdivisions Act)

Rule: ARM 17.36.101, *et seq.*, local regulations

Contact: DEPARTMENT OF ENVIRONMENTAL QUALITY
Permitting and Compliance Division
Public Water Supply and Subdivisions Bureau

LOCAL GOVERNMENT
Health Department

2. Application Requirements

An applicant planning to subdivide land must submit a completed subdivision application form, supporting information (see ARM 17.36.103) and public comment collected by the governing body regarding water and sanitation information, to the DEQ. If the DEQ has certified a local department or board of health to review subdivisions, the application must be submitted to the local reviewing authority.

Statute: 76-3-504 (1)(g)(iii)(B), 76-3-604, 76-3-622, 76-4-104 and 76-4-125, MCA

Rule: ARM 17.36.101-17.36.104

3. Review Procedures

- A. On receipt of a subdivision application or resubmittal or additional information provided by the applicant, the DEQ has 60 days for final action. If an Environmental Impact Statement is required, final action must be taken within 120 days. See MONTANA ENVIRONMENTAL POLICY ACT, p. 123.
- B. If a local government or board of health has been certified as the reviewing authority, it has 50 days to recommend action on the application to the DEQ. The DEQ then has 10 days to take final action. If the application is denied, the statutory time limits begin again once a response has been received.

Rule: ARM 17.36.106 and 17.36.108

4. Criteria

The DEQ's rules set standards and procedures relating to size of lots, topography, geology, hydrology, type of facilities proposed and other factors affecting public health and the quality of water for uses relating to agriculture, industry, recreation and wildlife. There must be adequate water supply, drainage, sewage and solid waste disposal systems. The DEQ will issue a certificate of subdivision approval when it is satisfied that adverse impacts to state waters will not occur and the water supply is of adequate quantity, quality and dependability; the sewage disposal facility is sufficient in terms of capacity and dependability; and the solid waste disposal and storm drainage plans and designs are in accordance with state and local laws and regulations.

Rule: ARM 17.36.101, *et seq.*

5. Fees

A schedule of fees is set out in the rules. Contact the DEQ, see the fee schedules in the rules or the fee checklist with the application materials.

Statute: 76-4-105, MCA

Rule: ARM 17.36.801, *et seq.*

6. Additional Information

If there is a denial of approval of the subdivision that relates to environmental health facilities, the aggrieved developer may request a hearing before the Board of Environmental Review.

Statute: 76-4-126, MCA

SUBDIVISION AND PLATTING ACT (Title 76, chapter 3)

1. Types of Activities Regulated

- A. All divisions of land creating parcels less than 160 acres in size, plus condominiums and manufactured home or recreational vehicle parks, are regulated under the Montana Subdivision and Platting Act and rules pursuant to the Act, unless exempt (see below).
- B. Title to subdivided land may not be sold or transferred until a certificate of survey or a final subdivision plat (if required) approved by the governing body has been filed with the county clerk and recorder.
- C. Exemptions: There are numerous exemptions established in Title 76, chapter 3, part 2, MCA. Very generally, final subdivision plat approval is not required for the following divisions of land under certain conditions, though applicable zoning regulations apply and a certificate of survey and certification that property taxes and special assessments have been paid are required: divisions for the purpose of relocation of common boundaries; a one time gift or sale to an immediate family member (1 per family member per county); and under certain conditions, transfers which include a covenant running with the land that provides exclusively for agricultural use of the land.

Some exemptions may not be allowed if their purpose is to evade the Montana Subdivision and Platting Act. Local governments must adopt evasion criteria as part of their subdivision regulations. These criteria are used to evaluate whether or not a proposed exemption represents an intention to evade the requirements of the act.

Statute: Title 76, chapter 3, part 2, MCA and 76-3-101, *et seq.*, MCA

Rule: ARM 24.183.1101, *et seq.*

Contact: LOCAL GOVERNMENT

2. Review Procedures

- 1) General Information: Cities, counties and towns are required to adopt subdivision regulations that establish procedures for submission and review of subdivision plats. The procedures vary depending on the size and nature of the proposed subdivision and whether or not a planning board has been appointed. A general overview of the procedures that apply to most major subdivisions (a *major subdivision* creates six or more parcels; a *minor subdivision* creates five or fewer parcels) is provided below.

For jurisdictions with planning boards, the review may be two-tiered: the planning board conducts the initial review and acts in an advisory capacity, and the final decision is made by the governing body. For areas without planning boards, the governing body is the only reviewing entity. In most jurisdictions, a subdivision administrator (planner or sanitarian) will be the subdivider's initial contact person and liaison.

- 2) A subdivision application, including, in most cases, either an environmental assessment or a summary of probable impacts, must be submitted to the governing body or its agent or agency. A fee may be assessed by the governing body to defray the expense of subdivision review. The governing body must establish a pre-application review process to ensure that the subdivider is aware of the applicable requirements.
- 3) The local government, after notice and a public hearing, approves, conditionally approves or denies the proposed subdivision. The governing body must make its final decision within 60 working days of a determination that the application is sufficient for review (35 working days for certain minor subdivisions) unless the parties agree to an extension or

suspension of the review period or a subsequent public hearing is scheduled.

If the governing body conditionally approves or denies the subdivision, it must provide a written statement to the applicant that includes identification of the regulations and statutes used in reaching the decision and an explanation of how they apply; the facts and conclusions that are the basis for the decision, including documents, testimony or other materials that form the basis of the decision; the conditions that must be satisfied before the final plat may be approved; and information regarding the appeal process.

- 4) The governing body must collect public comment submitted at a hearing or hearings regarding the water and sanitation information presented and make the comments available to the subdivider within 30 days after conditional approval or approval of the subdivision application and preliminary plat. The subdivider must, as part of the application for sanitation approval, forward the comments provided by the governing body to the DEQ or its certified agent for subdivisions that will create one or more parcels containing less than 20 acres and to the local health department or board of health for proposed subdivisions that will create one or more parcels containing 20 acres or more and less than 160 acres. The approval of the subdivision plat may be conditioned on this information only if it is based on regulations that the governing body has the authority to enforce.
- 5) In general, the developer of a major subdivision and some minor subdivisions must donate a portion of the subdivided land for public parks. A cash contribution may be accepted in lieu of a land donation.
- 6) The preliminary plat may be approved for one to three years. Certain extensions are permitted.
- 7) The subdivision must be surveyed by a registered land surveyor. The final plat and certificate of title must be submitted to the governing body. The final plat must be approved by the governing body if it conforms with the conditions imposed on the preliminary plat and all property taxes and special assessments have been paid.
- 8) Compliance with the Sanitation in Subdivisions Act is required before a final plat that creates parcels of less than 20 acres may be filed with the county clerk and recorder. See SANITATION IN SUBDIVISIONS, p. 162.

- 9) The subdivider may bring an action in District Court to recover damages if the governing body makes a decision that is arbitrary or capricious under the Subdivision and Platting Act. Certain aggrieved parties may appeal a decision on a preliminary or final plat to the District Court within 30 days.

Statute: 76-3-210, 76-3-402, 76-3-504, 76-3-601 through 76-3-612, 76-3-620 through 622 and 76-3-625, MCA

3. Criteria

The Montana Subdivision and Platting Act establishes minimum requirements for local subdivision regulations. Local subdivision regulations include both procedural and substantive requirements. Among other requirements, the regulations must include standards for design of lots, streets, and roads; grading and drainage; and for water supply, sewage and solid waste disposal at least as stringent as Montana Department of Environmental Quality rules.

In reviewing a proposed subdivision, the governing body must consider: 1) compliance with local subdivision regulations; 2) compliance with surveying requirements; 3) provision and recording of legal and physical access to each lot within the subdivision; 4) provision of easements for any planned utilities; and 5) the subdivision's impact on agriculture, agricultural water user facilities, local services, the natural environment, wildlife and wildlife habitat, and public health and safety (*primary criteria*). The local government may waive review of the impacts on the primary criteria in areas where a growth policy and zoning regulations are in place.

Statute: 76-3-504, 76-3-511 and 76-3-608, MCA

4. Water and Sanitation Information

Unless exempt from review under Title 76, chapter 4, MCA, (see SANITATION IN SUBDIVISIONS, p. 162), information about water and sanitation must be submitted to the governing body, or its agent or agency, with the subdivision application for a proposed subdivision that will include new water supply or wastewater facilities. Public comment about the water and wastewater facilities will be provided to the subdivider for submission to the DEQ.

Statute: 76-3-604 and 76-3-622, MCA.